IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2068 of 2004
with
CRIMINAL APPEAL No. 2069 of 2004
with
CRIMINAL APPEAL No. 2071 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BERUGA RAJYA BERUGAR - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NN PRAJAPATI for Appellant No(s).: 1.
MR SP HASURKAR APP for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date : 03/08/2005

COMMON ORAL JUDGMENT

1. All the three appellants of the above said three appeals were the accused of Special (N.D.P.S.) Case No.9/2002 of the Court of Additional Sessions Judge, Valsad, old number of this case was Special (N.D.P.S.) Case No.2/2001 and on account of District of Valsad being separated, this case was new numbered as above to be Special (N.D.P.S.) Case No.9/2002. All the three appellants were charged in said Sessions Case for the offences punishable under Section 8(c) r/w. Sections 20, 22, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. All the three appellants, vide judgment and order dated 28th November, 2004 delivered by the learned Additional Sessions Judge, Valsad came to be convicted for the offences punishable under Sections 20(b), (2)(b) r/w. Section 29 of the N.D.P.S. Act and each of the appellants was sentenced to undergo rigorous imprisonment of five years and to pay a fine of Rs.25,000/- each and in default, to undergo rigorous imprisonment of one year. Learned Additional Sessions Judge also directed that the period undergone by each of the appellants in custody during trial be given to them in set off as per Section 438 of the Criminal Procedure Code.

2. Being aggrieved and dissatisfied by the above said judgment and order, each of the appellants filed above

said three Criminal Appeals in this Court separately through jail, though each of the appellants was accused of the same Special (N.D.P.S.) Case No.9/2002, as aforesaid.

3. As per the brief facts of the case, one Mr.V.M.Rana, Superintendent (PRV) Customs, Valsad (Gujarat) preferred a complaint in the Court of Sessions Judge of Valsad at Navsari stating that on petrolling and random check took at Bhilad Check Post, one Luxury Bus bearing Registrtion NO.RJ-27-P-614 was stopped on 10th November, 2000 by the officer of the Customs (PRV), Valsad and officer of the Customs, Bhilad and made search of said bus. During the course of said search, the officers suspected one suitcase and one handbag lying near Seat Nos.31 and 32 of the said bus. The said suitcase and handbag belonged to present appellants and from the said suitcase and handbag, on search according to law 19 kilogram ganja was found in the presence of panchas. A sample was taken and was sent to laboratory and the appellants were arrested on the same day and were produced before the learned Judicial Magistrate (F.C.). The laboratory report confirmed the substances to be ganja.

4. A charge came to be framed against the present appellants which they denied and hence, the prosecution

examined seven witnesses to prove its case and produced documentary evidence on record also. After recording the evidence, a statement under Section 313 of the Criminal Procedure Code was recorded and circumstances incriminating against each of the appellants were put to them to which they denied in toto and stated that a false complaint came to be filed against them and their signatures were obtained without explaining anything to them. They further stated that in fact the mudamal ganja was seized from Railway Station, Valsad unclaimed and each of them was wrongly connected with the said mudamal.

5. After hearing both the sides, the learned Judge found that the prosecution was able to prove the charge against each of the appellants and, therefore, the learned trial Judge convicted and sentenced to each of the appellants as aforesaid. Hence this appeal.

6. In all the three appeals, learned advocate Mr.N.N.Prajapati for each of the appellants and learned APP Mr.S.P.Hasurkar for the respondent – State, in all the three appeals, were heard at length. As aforesaid, each of the appellants of above three were accused of the same Special Case. These appeals are heard together and are being decided by this common judgment.

7. The record and proceedings of the trial Court is going

through mainly, learned advocate for each of the appellants raised various contentions on merits and ultimately, he restricted his contentions to the extent of reduction of sentences maintaining the conviction awarded against each of the appellants by the trial Court. It was argued that all the three appellants are residents of Andhra Pradesh, this is the first offence committed by them, their family and whole set up is at Andhra Pradesh and right from 11th November, 2000, they are in custody. Almost, they have undergone four years and six months of imprisonment, because during the trial as well as during these appeals, any of the appellants was not released on bail and by reduction of sentence, if an opportunity is afforded to each of the appellants, re-formative purpose of the punishment would be served. Learned APP Mr.S.P.Hasurkar for the respondent State was also heard in this respect.

8. Having heard learned counsels, it transpires that the scope of these three appeals is now narrowed down to the quantum of sentence awarded to each of the appellants. The jail remarks dated 26th July, 2005 as placed on record in respect of all appellants of the Criminal Appeal No.2071 of 2004 clearly indicates that on that day, each of the appellants has undergone actual imprisonment for 08 months and 28 days and each

of the appellants, by virtue of the direction of the trial Court, is entitled to set off for the period of 03 years, 11 months and 18 days. Now considering the remarks, each of the appellants has undergone substantive sentence of 04 years, 08 months and 16 days on 26th July, 2005, out of the imprisonment of 05 years inflicted upon each of the appellants. Therefore, so far as the substantive sentence awarded by the trial Judge is concerned, each of the appellants is now required to undergo less than four months of imprisonment, though each of the appellants is imposed with fine of Rs.25,000/- and in default to undergo rigorous imprisonment of one year. None of the appellants has deposited the amount of fine, in pursuance of the sentence imposed upon each of the appellants.

9. The object of punishment is deterrent, re-formative and retributive. Punishment serves a purpose in as much as it acts deterrent for those who have propensity to commit such offences, while inflicting punishment, two objectives i.e. (i) punishing the criminal not to repeat the crime and (ii) attempt to reform him to be a respectable member of the society must be taken into consideration. Having regard to the facts and circumstances of the case, it appears that each of the

applicants is permanent resident of Andhra Pradesh and each is about in his early 30's to late 30's. Above all, on going through the record, it clearly appears that this is their first offence, the factual aspect also reveals that each of the appellants has undergone more than 3/4th imprisonment of the substantive sentence of imprisonment awarded to each of the appellants. Any time, during this period of imprisonment, none of the appellants is released either on parole, furlough or on temporary bail. Their jail conduct is noted to be good. In these circumstances, the request made by the learned advocate for all the appellants is required to be evaluated and is required to be granted to the extent that after reducing the quantum of the sentence awarded to each of the appellants, they be given an opportunity to reform themselves.

10. In above view of the matter, Criminal Appeal No.2068/04, Criminal Appeal No.2069/04 and Criminal Appeal No.2071/04 are partly allowed and while maintaining conviction as awarded by the learned trial Judge to each of the appellants in Special (N.D.P.S.) Case No.9/2002, the quantum of punishment is reduced as under:

While maintaining conviction awarded to each of the appellants, each of the appellants of Criminal Appeal

No.2068/04, Criminal Appeal No.2069/04 and Criminal Appeal No.2071/04 is sentenced to undergo rigorous imprisonment for the period, each of the above appellants of above three Criminal Appeals have undergone instead of rigorous imprisonment of five years awarded to each of the appellants by the trial Judge. Further, each of the appellants is sentenced to pay a fine of Rs.10,000/- and to undergo rigorous imprisonment of six months, in default instead of to pay a fine of Rs.25,000/- each and to undergo rigorous imprisonment of one year as awarded by the learned trial Judge.

The Criminal Appeal No.2068/04, Criminal Appeal No.2069/04 and Criminal Appeal No.2071/04 are, therefore, partly allowed as above said and only interference is made in the judgment and order impugned in these appeals to the above extent of reduction of sentences awarded to each of the appellants. It is also directed that each of the above three appellants be set to liberty, when the sentences as modified as above, is completed, if any of them is not required to be detained in jail.

[J. R. VORA,J.]

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